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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 STAR FABRICS, INC.,

11 Plaintiff,

12 v.

13 ZULILY, LLC, *et al.*,

14 Defendants.
15
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Case No.: 2:18-cv-03071-DMG(PJWx)
Honorable Dolly M. Gee Presiding

**STIPULATED PROTECTIVE
ORDER**

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18 **1. A. PURPOSES AND LIMITATIONS**

19 Discovery in this action is likely to involve production of confidential,
20 proprietary, or private information for which special protection from public
21 disclosure and from use for any purpose other than prosecuting this litigation may be
22 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter
23 the following Stipulated Protective Order. The parties acknowledge that this Order
24 does not confer blanket protections on all disclosures or responses to discovery and
25 that the protection it affords from public disclosure and use extends only to the

1 limited information or items that are entitled to confidential treatment under the
2 applicable legal principles. The parties further acknowledge, as set forth in Section
3 12.3, below, that this Stipulated Protective Order does not entitle them to file
4 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
5 that must be followed and the standards that will be applied when a party seeks
6 permission from the court to file material under seal.

7 **B. GOOD CAUSE STATEMENT**

8 This action is likely to involve trade secrets, customer and pricing lists and
9 other valuable research, development, commercial, financial, technical and/or
10 proprietary information for which special protection from public disclosure and from
11 use for any purpose other than prosecution of this action is warranted. Such
12 confidential and proprietary materials and information consist of, among other things,
13 confidential business or financial information, information regarding purchase and
14 sale prices of fabric or garments by suppliers, manufacturers, importers, distributors
15 or fashion retailers, information regarding confidential business practices,
16 information regarding the creation, purchase or sale of graphics used on textiles and
17 garments or other confidential commercial information (including information
18 implicating privacy rights of third parties), information otherwise generally
19 unavailable to the public, or which may be privileged or otherwise protected from
20 disclosure under state or federal statutes, court rules, case decisions, or common law.
21 Accordingly, to expedite the flow of information, to facilitate the prompt resolution
22 of disputes over confidentiality of discovery materials, to adequately protect
23 information the parties are entitled to keep confidential, to ensure that the parties are
24 permitted reasonable necessary uses of such material in preparation for and in the
25 conduct of trial, to address their handling at the end of the litigation, and serve the
ends of justice, a protective order for such information is justified in this matter. It is
the intent of the parties that information will not be designated as confidential for

1 tactical reasons and that nothing be so designated without a good faith belief that it
2 has been maintained in a confidential, non-public manner, and there is good cause
3 why it should not be part of the public record of this case.

4 **2. DEFINITIONS**

5 2.1 Action: *Star Fabrics, Inc. v. Zulily, LLC, et al.*, Case No. 2:18-cv-03071-
6 DMG-PJW.

7 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
8 information or items under this Order.

9 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
10 it is generated, stored or maintained) or tangible things that qualify for protection
11 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
12 Cause Statement.

13 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
14 support staff).

15 2.5 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 2.6 Disclosure or Discovery Material: all items or information, regardless of
19 the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced or
21 generated in disclosures or responses to discovery in this matter.

22 2.7 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as
24 an expert witness or as a consultant in this Action.

25 2.8 House Counsel: attorneys who are employees of a party to this Action.
House Counsel does not include Outside Counsel of Record or any other outside
counsel.

1 2.9 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
4 this Action but are retained to represent or advise a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm which
6 has appeared on behalf of that party, and includes support staff.

7 2.11 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY.”

19 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21 3. **SCOPE**

22 The protections conferred by this Stipulation and Order cover not only
23 Protected Material (as defined above), but also (1) any information copied or
24 extracted from Protected Material; (2) all copies, excerpts, summaries, or
25 compilations of Protected Material; and (3) any testimony, conversations, or
presentations by Parties or their Counsel that might reveal Protected Material.

1 Any use of Protected Material at trial shall be governed by the orders of the
2 trial judge. This Order does not govern the use of Protected Material at trial.

3 **4. DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs. Final disposition shall be
7 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
8 or without prejudice; and (2) final judgment herein after the completion and
9 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
10 including the time limits for filing any motions or applications for extension of time
pursuant to applicable law.

11 **5. DESIGNATING PROTECTED MATERIAL**

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
13 Party or Non-Party that designates information or items for protection under this
14 Order must take care to limit any such designation to specific material that qualifies
15 under the appropriate standards. The Designating Party must designate for protection
16 only those parts of material, documents, items, or oral or written communications that
17 qualify so that other portions of the material, documents, items, or communications
18 for which protection is not warranted are not swept unjustifiably within the ambit of
this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations
20 that are shown to be clearly unjustified or that have been made for an improper
21 purpose (e.g., to unnecessarily encumber the case development process or to impose
22 unnecessary expenses and burdens on other parties) may expose the Designating
Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this
5 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
6 or ordered, Disclosure or Discovery Material that qualifies for protection under this
7 Order must be clearly so designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents,
10 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
11 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
12 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
13 portion or portions of the material on a page qualifies for protection, the Producing
14 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
15 markings in the margins).

16 A Party or Non-Party that makes original documents available for inspection
17 need not designate them for protection until after the inspecting Party has indicated
18 which documents it would like copied and produced. During the inspection and
19 before the designation, all of the material made available for inspection shall be
20 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents
21 it wants copied and produced, the Producing Party must determine which documents,
22 or portions thereof, qualify for protection under this Order. Then, before producing
23 the specified documents, the Producing Party must affix the "CONFIDENTIAL
24 legend" to each page that contains Protected Material. If only a portion or portions of
25 the material on a page qualifies for protection, the Producing Party also must clearly
identify the protected portion(s) (e.g., by making appropriate markings in the
margins).

1 (b) for testimony given in depositions that the Designating Party identify the
2 Disclosure or Discovery Material on the record, before the close of the deposition all
3 protected testimony.

4 (c) for information produced in some form other than documentary and for any
5 other tangible items, that the Producing Party affix in a prominent place on the
6 exterior of the container or containers in which the information is stored the legend
7 “CONFIDENTIAL.” If only a portion or portions of the information warrants
8 protection, the Producing Party, to the extent practicable, shall identify the protected
9 portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
11 to designate qualified information or items does not, standing alone, waive the
12 Designating Party’s right to secure protection under this Order for such material.
13 Upon timely correction of a designation, the Receiving Party must make reasonable
14 efforts to assure that the material is treated in accordance with the provisions of this
15 Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court’s
19 Scheduling Order.

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37.1 et seq.

22 6.3 The burden of persuasion in any such challenge proceeding shall be on the
23 Designating Party. Frivolous challenges, and those made for an improper purpose
24 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
25 expose the Challenging Party to sanctions. Unless the Designating Party has waived
or withdrawn the confidentiality designation, all parties shall continue to afford the

1 material in question the level of protection to which it is entitled under the Producing
2 Party's designation until the Court rules on the challenge.

3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending, or attempting to settle this Action. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the Action has been terminated, a Receiving
9 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

10 Protected Material must be stored and maintained by a Receiving Party at a
11 location and in a secure manner that ensures that access is limited to the persons
12 authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

14 Unless otherwise ordered by the court or permitted in writing by the
15 Designating Party, a Receiving Party may disclose any information or item
16 designated "CONFIDENTIAL" only to:

17 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to
19 disclose the information for this Action;

20 (b) the officers, directors, and employees (including House Counsel) of the
21 Receiving Party to whom disclosure is reasonably necessary for this Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this Action and who have signed the
24 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (d) the court and its personnel;

(e) court reporters and their staff;

1 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
2 to whom disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses, in the
7 Action to whom disclosure is reasonably necessary, provided: (1) the deposing party
8 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
9 not be permitted to keep any confidential information unless they sign the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
11 agreed by the Designating Party or ordered by the court. Pages of transcribed
12 deposition testimony or exhibits to depositions that reveal Protected Material may be
13 separately bound by the court reporter and may not be disclosed to anyone except as
14 permitted under this Stipulated Protective Order; and

15 (i) any mediator or settlement officer, and their supporting personnel, mutually
16 agreed upon by any of the parties engaged in settlement discussions.

17 7.3 Disclosure of “CONFIDENTIAL – ATTORNEYS EYES ONLY”
18 Information or Items. Unless otherwise ordered by the Court or permitted in writing
19 by the Designating Party, a Receiving Party may disclose any information or item
20 designated “CONFIDENTIAL – ATTORNEYS EYES ONLY” only to:

21 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
22 employees of said Outside Counsel of Record to whom it is reasonably necessary to
23 disclose the information for this Action;

24 (b) Experts (as defined in this Order) of the Receiving Party to whom
25 disclosure is reasonably necessary for this Action and who have signed the
“Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the Court and its personnel;

- 1 (d) court reporters and their staff;
- 2 (e) professional jury or trial consultants, mock jurors, and Professional
- 3 Vendors to whom disclosure is reasonably necessary for this Action and who have
- 4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 5 (f) the author or recipient of a document containing the information or a
- 6 custodian or other person who otherwise possessed or knew the information;
- 7 (g) during their depositions, witnesses, and attorneys for witnesses, in the
- 8 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
- 9 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
- 10 not be permitted to keep any confidential information unless they sign the
- 11 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
- 12 agreed by the Designating Party or ordered by the court. Pages of transcribed
- 13 deposition testimony or exhibits to depositions that reveal Protected Material may be
- 14 separately bound by the court reporter and may not be disclosed to anyone except as
- 15 permitted under this Stipulated Protective Order; and
- 16 (h) any mediator or settlement officer, and their supporting personnel,
- 17 mutually agreed upon by any of the parties engaged in settlement discussions.

16 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**

17 **PRODUCED IN OTHER LITIGATION**

18 If a Party is served with a subpoena or a court order issued in other litigation

19 that compels disclosure of any information or items designated in this Action as

20 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY,” that

21 Party must:

22 (a) promptly notify in writing the Designating Party. Such notification shall

23 include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to

25 issue in the other litigation that some or all of the material covered by the subpoena

1 or order is subject to this Protective Order. Such notification shall include a copy of
2 this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by
4 the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with
6 the subpoena or court order shall not produce any information designated in this
7 action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY”
8 before a determination by the court from which the subpoena or order issued, unless
9 the Party has obtained the Designating Party’s permission. The Designating Party
10 shall bear the burden and expense of seeking protection in that court of its
11 confidential material and nothing in these provisions should be construed as
12 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
13 directive from another court.

14 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
15 **PRODUCED IN THIS LITIGATION**

16 (a) The terms of this Order are applicable to information produced by a Non-
17 Party in this Action and designated as “CONFIDENTIAL” or “CONFIDENTIAL –
18 ATTORNEYS EYES ONLY.” Such information produced by Non-Parties in
19 connection with this litigation is protected by the remedies and relief provided by this
20 Order. Nothing in these provisions should be construed as prohibiting a Non-Party
21 from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:

1 (1) promptly notify in writing the Requesting Party and the Non-Party
2 that some or all of the information requested is subject to a confidentiality
3 agreement with a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the Stipulated
5 Protective Order in this Action, the relevant discovery request(s), and a
6 reasonably specific description of the information requested; and

7 (3) make the information requested available for inspection by the Non-
8 Party, if requested.

9 (c) If the Non-Party fails to seek a protective order from this court within
10 14 days of receiving the notice and accompanying information, the Receiving
11 Party may produce the Non-Party's confidential information responsive to the
12 discovery request. If the Non-Party timely seeks a protective order, the
13 Receiving Party shall not produce any information in its possession or control
14 that is subject to the confidentiality agreement with the Non-Party before a
15 determination by the court. Absent a court order to the contrary, the Non-Party
16 shall bear the burden and expense of seeking protection in this court of its
17 Protected Material.

18 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
20 Protected Material to any person or in any circumstance not authorized under this
21 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
22 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
23 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
24 persons to whom unauthorized disclosures were made of all the terms of this Order,
25 and (d) request such person or persons to execute the "Acknowledgment and
Agreement to Be Bound" that is attached hereto as Exhibit A.

1 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other protection,
5 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
6 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
7 may be established in an e-discovery order that provides for production without prior
8 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
9 parties reach an agreement on the effect of disclosure of a communication or
10 information covered by the attorney-client privilege or work product protection, the
11 parties may incorporate their agreement in the stipulated protective order submitted
12 to the court.

12 **12. MISCELLANEOUS**

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this
16 Protective Order no Party waives any right it otherwise would have to object to
17 disclosing or producing any information or item on any ground not addressed in this
18 Stipulated Protective Order. Similarly, no Party waives any right to object on any
19 ground to use in evidence of any of the material covered by this Protective Order.

20 12.3 Filing Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
22 only be filed under seal pursuant to a court order authorizing the sealing of the
23 specific Protected Material at issue. If a Party's request to file Protected Material
24 under seal is denied by the court, then the Receiving Party may file the information in
25 the public record unless otherwise instructed by the court.

1 **13. FINAL DISPOSITION**

2 After the final disposition of this Action, as defined in paragraph 4, within 60
3 days of a written request by the Designating Party, each Receiving Party must return
4 all Protected Material to the Producing Party or destroy such material. As used in this
5 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
6 summaries, and any other format reproducing or capturing any of the Protected
7 Material. Whether the Protected Material is returned or destroyed, the Receiving
8 Party must submit a written certification to the Producing Party (and, if not the same
9 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
10 (by category, where appropriate) all the Protected Material that was returned or
11 destroyed and (2) affirms that the Receiving Party has not retained any copies,
12 abstracts, compilations, summaries or any other format reproducing or capturing any
13 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
14 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
16 reports, attorney work product, and consultant and expert work product, even if such
17 materials contain Protected Material. Any such archival copies that contain or
18 constitute Protected Material remain subject to this Protective Order as set forth in
19 Section 4 (DURATION).

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1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 Dated: April 26, 2019

6 By: /s/ Jessica L. Phillips
7 Stephen M. Doniger, Esq.
8 Jessica L. Phillips, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff

9 Dated: April 26, 2019

10 By: /s/ Morgan E. Pietz
11 Morgan E. Pietz, Esq.
12 Cyrus E. Shahriari, Esq.
PIETZ & SHAHRIARI, LLP
Attorneys for Defendant Zulily, LLC

13 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

14 DATED: April 25, 2019

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16 _____
17 HONORABLE PATRICK J. WALSH
18 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *Star Fabrics, Inc. v. Zulily, LLC*, Case No.: 2:18-cv-03071-DMG-PJW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed:

Printed name: _____

Signature: _____